

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

DOCKETED
AUG 22 1980

THE MAGNAVOX COMPANY, a)
Corporation, and SANDERS)
ASSOCIATES, INC., a)
Corporation,)
Plaintiffs,) Consolidated Civil
v.) Action Nos.
UNIVERSAL RESEARCH LABORATORIES,) 77 C 3159
INCORPORATED, a Corporation,) 78 C 4951
et al.,) 78 C 5041
Defendants.)

WARDS INTERROGATORY RESPONSES

Defendant Wards hereby responds to Interrogatories
to Defendants Sears and Wards as follows:

INTERROGATORY No. 1:

Does defendant contend that the patent in suit or
any of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52,
54, 55, 57 or 60-64 thereof is invalid, void, or unen-
forceable for any reason under 35 U.S.C. §§102 or 103?
If so, state each and every reason, ground, or basis
known to defendant to support each such contention and
fully identify each and every item of prior art upon
which defendant bases that contention. The response
to this interrogatory should include, but not be limited
to, a statement in detail of the requested information
as to each matter alleged in or supporting any matter
alleged in subparagraphs (a) - (f) of paragraph 7 of
the Affirmative Defenses included in defendant's answer
to the complaint in this action.

RESPONSE:

Yes. The reasons are generally set forth in paragraphs 5, 6, 7 and 8 of the Affirmative Defenses portion of defendants Bally and Midway pleading entitled Answer and Counterclaim. However, there has been no discovery which would enable the defendant to state "each and every reason, ground or basis" for supporting defendant's contentions of invalidity or unenforceability of the patent in suit. Also, plaintiffs have not advised defendant as to which claims are allegedly infringed by the defendant. Until defendant is advised as to which claims are allegedly infringed and how such claims read on the structure of defendant, it is premature for defendant to state its contentions. Further, defendant will certainly comply with the provisions of 35 U.S.C. 282.

INTERROGATORY No. 2:

Does defendant contend that the patent in suit or any of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57 or 60-64 thereof is invalid, void or unenforceable for any reason under 35 U.S.C. §103? If so, state each and every reason, ground, or basis known to defendant to support each such contention including a statement of what defendant contends is the art to which the subject matter patented in the patent in suit pertains and what defendant contends was the level of skill of a person of ordinary skill in that art at the times the invention of the patent in suit was made and the application for the original patent in suit was filed. The response to this interrogatory should include, but not be limited to, a statement in detail of the requested information as to each matter alleged in or supporting any matter alleged in subparagraphs (g) - (h) of paragraph 7 of the Affirmative Defenses included in defendant's answer to the complaint in this action.

RESPONSE:

See response to Interrogatory No. 1.

INTERROGATORY No. 3:

Does defendant contend that the patent in suit or any of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57 or 60-64 is invalid, void, or unenforceable for any reason under 35 U.S.C. §112? If so, state each and every reason, ground, or basis known to defendant to support each such contention, including a statement of each and every alleged deficiency or omission in the written description of the invention in the patent in suit and why such alleged deficiency or omission would prevent any person skilled in the art to which the invention of the patent in suit pertains or is most nearly connected from making and using the same, each mode of carrying out the invention of the patent in suit which was contemplated by the inventor named in the patent as better than the mode or modes set forth therein, and each ambiguity, unclarity, or other manner in which the claims of the patent in suit fail to particularly point out or distinctly claim the subject matter which the inventor regarded as his invention, and identify every act, fact, or occurrence relied upon by defendant to support each such reason, ground, or basis. The response to this interrogatory should include, but not be limited to, a statement in detail of the requested information as to each matter alleged in or supporting any matter alleged in subparagraphs (i) and (j) of paragraph 7 of the Affirmative Defenses included in defendant's answer to the complaint in this action.

RESPONSE:

See response to Interrogatory No. 1.

INTERROGATORY No. 4:

Does defendant contend that the patent in suit or any of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57 or 60-64 is invalid, void, or unenforceable

for any reason under 35 U.S.C. §§251 or 252? If so, state each and every reason, ground, or basis known to defendant to support such contentions and identify every act, fact, or occurrence relied upon by defendant to support each such reason, ground, or basis.

RESPONSE:

See response to Interrogatory No. 1.

INTERROGATORY No. 5:

Does defendant contend that the patent in suit or any of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57, or 60-64 thereof is or at any time was invalid, void, or unenforceable against defendant or others for any reasons other than those stated in defendant's responses to interrogatories 1-4 hereof. If so, state in detail each and every such other contention, state each and every reason, ground, or basis known to defendant to support each such contention, and identify every act, fact, or occurrence relied upon by defendant to support each such reason, ground or basis. The response to this interrogatory should include, but not be limited to, a statement in detail of the requested information as to each matter alleged in or supporting any matter alleged in subparagraphs (k) - (n) of paragraph 7 and paragraphs 9 and 10 of the Affirmative Defenses included in defendant's answer to the complaint in this action.

RESPONSE:

See response to Interrogatory No. 1.

INTERROGATORY No. 6:

Identify each and every consumer television game product which defendant has manufactured, used, and/or sold by stating its model or type number, stating the date on which defendant first began to manufacture and/or sell that model or type number, stating the date on which defendant last

manufactured and/or sold that model or type number, identifying the manufacturer(s) of and the party(ies) from whom defendant purchased that model or type number, identifying the present employees of defendant having the greatest knowledge of the operation of the electrical circuitry of that model or type number, identifying the person or persons responsible for deciding which game or games were included in that model or type number, and describing the game or games played thereon as they appear to the player. Only the model or type number need be supplied as to consumer television game products which defendant knows to be either products of plaintiff Magnavox or covered by a license or settlement agreement with Magnavox under the patent in suit.

RESPONSE:

The television game product which defendant Wards has sold which are not the products of Magnavox, Atari or Coleco are as follows:

<u>Model No.</u>	<u>Years of Sale</u>	<u>Description</u>	<u>Manufacturer</u>
95006	1976	Model 2001	Sands
95001	1976	-	Executive
Colorama VIII	1978	-	Monterray Sales
95005	1976-1977	VS1	Venture
95010		VS5	Electronics
95014		VS7	
95042		9V adaptor	

<u>Model No.</u>	<u>Years of Sale</u>	<u>Description</u>	<u>Manufacturer</u>
95080	-	Arcade	Bally
95081		Cartridge	
95082		Cartridge	
95085		Cartridge	
95086		Cartridge	
95087		Cartridge	
95016	-	Model 402	APF
95020		Model 401	
95021		Model 444	
95041		Adaptor	
95070		Model 1000	
95071		Cartridge	
95090	-	-	Associated Sales
95095			
95096			

The employees of defendant Wards that were involved in purchasing games were Jack K. Kucera, S. G. Gertzfeld and David H. Fish, of which Mr. Kucera is the most knowledgeable with respect to video games.

The game or games played on the various television games sold by defendant Wards are described in the owner's manuals and other material which defendant Wards is producing as part of the response to the Plaintiffs' Requests for the Production of Documents.

INTERROGATORY No. 7:

Does defendant contend that the manufacture and/or sale of any consumer television game product identified in defendant's response to interrogatory 6 hereof is not an act of infringement of, contributory infringement of, or inducement to infringe any of claims 25, 26, 28, 29, 31, 32, 44, 45, 51, 52, 54, 55, 57 or 60-64 of the patent in suit for any reason other than the alleged invalidity or unenforceability of the claim or the patent in suit? If so, state specifically with respect to each such claim each and every reason, ground, or basis known to defendant to support such contention including a statement of any language of the claim which defendant contends is not met by the consumer television game product, and if defendant asserts there is any estoppel with respect to the stated language, specifically identify each and every act, fact, or occurrence and each limitation, interpretation, admission, representation, proceeding, argument, amendment, or other item which defendant contends resulted in any such estoppel. The response to this interrogatory should include, but not be limited to, a statement in detail of the requested information as to each matter alleged in or supporting the matter alleged in paragraphs 1-6 and 8 of the Affirmative Defenses included in defendant's answer to the complaint in this action. Defendant need not respond to this interrogatory as to any consumer television game products which defendant knows to be either products of plaintiff Magnavox or covered by a license or settlement agreement with Magnavox under the patent in suit.

RESPONSE:

Defendant is unable to state its contentions with respect to invalidity and unenforceability until plaintiffs specify which claims are allegedly infringed by defendant and how such claims are read on the structure of the defendant.

INTERROGATORY No. 8:

Identify each person whom defendant expects to call as an expert witness at the trial in this civil action and as to each expert witness state the subject matter or subject matters on which he is expected to testify, the substance of the facts and opinions as to which the expert is expected to testify, and summarize the grounds for each such opinion; and identify each person whom defendant has retained or specially employed in anticipation of this civil action and/or in preparation for trial in this civil action.

RESPONSE:

Defendant is unable to answer this interrogatory inasmuch as the defendant has not presently retained or specially employed anyone as an expert witness.

INTERROGATORY No. 9:

If defendant contends that plaintiffs are not entitled to recover from defendant for infringement of the patent in suit for any reason, ground, or basis not stated in defendant's response to interrogatories 1-5 and 7 hereof, state fully and explicitly each such other reason, ground, or basis and identify each document, act, fact, or occurrence relied upon by defendant to support each such reason, ground, or basis.

RESPONSE:

See response to Interrogatory No. 1.

INTERROGATORY No. 10:

Has defendant given or received any indemnity agreements relating to or including claims or charges of patent infringement of the patent in suit? If so, and separately as to each such indemnity agreement, identify the parties other than defendant to that agreement; state the date such indemnity agreement was entered into and the dates, if any, such indemnity agreement was terminated or modified; state the full and complete terms of such indemnity agreement and any modifications thereto.

RESPONSE:

Defendant objects to this interrogatory as requesting information that is not relevant to the issues in this action nor calculated to lead to the discovery of admissible evidence.

INTERROGATORY No. 11:

Identify each and every document or thing the production of which is requested in plaintiffs "Request for Production to Bally and Midway" served herewith which defendant refuses to produce for inspection and copying by plaintiffs and state the reason for that refusal and all facts known to defendant which justify that refusal.

RESPONSE:

To the extent that the document request referred to in this interrogatory is indefinite, defendant is unable to determine documents that come within the request and therefore cannot identify such documents. To the extent that the document request is too broad, identification of such documents is unduly burdensome and speculative. Defendant is under no obligation to identify those documents and things that are not relevant to the issues of this action and are not reasonably calculated to lead to the discovery of admissible evidence. However, defendant does agree, provided the document request is proper and understandable, to provide the requested identification of such documents and particularly any privileged documents.

SIGNATURE AS TO ANSWERS

STATE OF ILLINOIS)
COUNTY OF COOK) SS
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I, Christopher J. Michas, Assistant General Counsel and Assistant Secretary of Montgomery Ward & Co., Incorporated, a defendant in consolidated Civil Action Nos. 77C 3159, 78C 4951 and 78C 5041, being duly sworn, state that the foregoing Montgomery Ward Interrogatory Responses are given by me on the basis of my personal knowledge, information furnished to me from the files of Montgomery Ward & Co., Incorporated, and on the basis of information given to me by various employees and attorneys of Montgomery Ward & Co., Incorporated, in response to my request for such information and that these answers, to the best of my information and belief are correct.

Christopher J. Michas
Christopher J. Michas
Assistant General Counsel
and Assistant Secretary

Subscribed and Sworn to before me this 14th day of August, 1980.

Christopher J. Michas
Notary Public in and for
said State and County

My commission Expires:

March 6, 1982